



November 3, 2016

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: NOTICE OF EX PARTE**  
**GN Docket No. 14-28: *Protecting and Promoting the Open Internet***

Dear Ms. Dortch:

On November 1, Rebecca Murphy Thompson, EVP & General Counsel for Competitive Carriers Association (“CCA”), Courtney Neville, Policy Council for CCA, and I met with Nick Degani, Legal Advisor to Commissioner Pai, to discuss the item on circulation regarding the small business exemption to the enhanced transparency requirements adopted in the *2015 Open Internet Order*<sup>1</sup> as captioned above. On November 2, I met with Claude Aiken, Legal Advisor to Commissioner Clyburn, and Rebecca Murphy Thompson and I met separately with Amy Bender, Legal Advisor to Commissioner O’Rielly, to discuss the same. On November 3, Mike Lazarus, Managing Member at Telecommunications Law Professionals, representing CCA, and I met with Travis Litman, Legal Advisor to Commissioner Rosenworcel, and Rebecca Murphy Thompson, Courtney Neville and I met separately with Stephanie Weiner and Lisa Hone, both Legal Advisors to Chairman Wheeler, to discuss the same item.

CCA thanked the Commission for taking up the small provider exemption, as the current exemption will shortly expire on December 15, 2016.<sup>2</sup> Although the Office of Management and Budget (“OMB”) has not yet approved the enhanced transparency rules, the small provider

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<sup>1</sup> Included in the enhanced rules are requirements to disclose (1) commercial terms for prices, one time and recurring fees, and data cap allowances; (2) network performance characteristics like packet loss, latency, actual and expected network performance over a reasonable time and during “peak usage” on a CMA-basis; (3) network management practices, including a requirement to issue individual notice to consumers when their use approaches a trigger point for a network management practice. *See Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order on Remand, 30 FCC Rcd 5601, ¶¶ 164-81 (2015) (“*2015 Open Internet Order*”), *aff’d United States Telecom Association, et al. v. FCC*, No. 15-1063 (D.C. Cir. June 14, 2016; *see also Guidance on Open Internet Transparency Rule Requirements*, GN Docket No. 14-28, Public Notice, DA 16-569 (rel. May 19, 2016) (“*2016 Guidance*”).

<sup>2</sup> *Protecting and Promoting the Open Internet*, GN Docket No. 14-28, Report and Order, 30 FCC Rcd 14162, ¶ 1 (CGB 2015).

exemption is too important to smaller carriers for it to lapse without a clear path toward permanent relief. In particular, CCA expressed strong support for the Order establishing an automatic waiver for currently-exempt small carriers until the Commission fully resolves the issue, but specified that this interim relief should include all aspects of the current exemption.

CCA also voiced support for the Commission's intent to seek comment on alternative definitions of a "small provider" to its current exemption threshold, 100,000 or fewer connections, including both the Small Business Administration ("SBA") definition and the Congressionally-supported 250,000 subscribers or less.<sup>3</sup> CCA expressed a preference for the SBA definition of small telecommunications provider, but, in the alternative, recommended exempting providers serving 250,000 or fewer subscribers, as disclosed on the provider's Form 477.

CCA urged the Commission to tentatively conclude that small providers should be permanently exempt from the enhanced network performance and enhanced network practices requirements of the transparency rules.<sup>4</sup> These rules, CCA reiterated, would impose formidable compliance burdens that warrant permanent relief.<sup>5</sup> As CCA and others have filed on record—most recently in response to the *30-day PRA Notice*<sup>6</sup>—the Commission has long underestimated the compliance burden presented by the enhanced transparency rules, especially in a small carrier context.<sup>7</sup>

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<sup>3</sup> See 13 C.F.R. § 121.201, NAICS code 517210 (2012 NAICS). The House of Representatives unanimously passed the Small Business Broadband Deployment Act twice—first on March 16, 2016 and again on September 29, 2016 as part of the Communications Act Update of 2016—which incorporates a five-year sunset provision. The Senate version of the Act is similar with a 250,000 subscriber threshold with a three-year sunset. The Senate version was reported out of the Senate Commerce Committee by a voice vote on June 15, 2016. See Small Business Broadband Deployment Act, H.R. 4596, 114th Cong. (2016); see also H. Energy and Commerce Comm., 114th Cong., *Text: H.R. 4596, The Small Business Broadband Deployment Act* (Mar. 14, 2016), <https://www.congress.gov/bill/114th-congress/house-bill/4596/text?q=%7B%22search%3A%5B%22HR4596%22%5D%7D%22&resultIndex=1>; see also Small Business Broadband Deployment Act, S.2283, 114th Cong., *Text: S.2283, Small Business Broadband Deployment Act*, <https://www.congress.gov/bill/114th-congress/senate-bill/2283/text>.

<sup>4</sup> The Commission should, rather than tentatively concluding that commercial terms be left out of a future exemption, seek comment on whether the enhanced commercial terms disclosures should be included in a future exemption.

<sup>5</sup> *2015 Open Internet Order* at ¶¶ 165, 169, 171.

<sup>66</sup> See Comments of Competitive Carriers Association, *Transparency Rule Disclosures, Protecting and Promoting the Open Internet, Report and Order on Remand, Declaratory Ruling, and Order*, OMB Control Number: 3060-1158 (Sep. 12, 2016); see also *Information Collection Being Submitted for Review and Approval to the Office of Management and Budget*, 81 FR 53145 (Aug. 11, 2016) ("*30-day PRA Notice*"); see also *Information Collection Being Reviewed by the Federal Communications Commission*, 80 FR 29000 (May 20, 2015) ("*60-day PRA Notice*").

<sup>7</sup>In the 30-day PRA Notice, the Commission's compliance burden estimate—99,466 hours, at \$640,000 for "Total Annualized Capital, Operation, and Maintenance Costs," across 3,188 respondents—equates to 31.2 hours and \$200.75 per provider; this does not reflect the substantial costs imposed by the comprehensive, multi-faceted Enhanced Transparency Rules. See *30-day PRA Notice* at 53145-46.

CCA looks forward to working with the Commission on this important item.

Respectfully submitted,

/s/ Elizabeth Barket

Steven K. Berry

Rebecca Murphy Thompson

Elizabeth Barket

COMPETITIVE CARRIERS ASSOCIATION

805 15<sup>th</sup> Street NW, Suite 401

Washington, DC 20005

cc (via email):

[Nicholas.Degani@fcc.gov](mailto:Nicholas.Degani@fcc.gov)

[Claude.Aiken@fcc.gov](mailto:Claude.Aiken@fcc.gov)

[Amy.Bender@fcc.gov](mailto:Amy.Bender@fcc.gov)

[Travis.Litman@fcc.gov](mailto:Travis.Litman@fcc.gov)

[Stephanie.Weiner@fcc.gov](mailto:Stephanie.Weiner@fcc.gov)

[Lisa.Hone@fcc.gov](mailto:Lisa.Hone@fcc.gov)